

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Salk	Team: Team # 5	CCRB Case #: 200808923	<input type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/12/2008 1:30 AM	Location of Incident: the uptown platform of the Astor Place subway station, and the Transit District 4 stationhouse	18 Mo. SOL 12/12/2009	Precinct: 09
Date/Time CV Reported Mon, 06/23/2008 2:03 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/23/2008 2:03 PM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Vito Labella	00000	909807	TB DT04
2. POM Jon Crose	03119	910330	TB DT04

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Folmer	19073	911256	TB DT04
2. SGT Florin Duta	03325	925229	TB DT04
3. POM Christop Bradley	30941	918776	TB DT04

Officer(s)	Allegation	Investigator Recommendation
A.POM Jon Crose	Discourtesy: At the Astor Place subway station, PO Jon Crose acted rudely toward § 87(2)(b)	
B.LT Vito Labella	Abuse: At the Transit Bureau District 4 stationhouse, Lt. Vito Labella did not process § 87(2)(b)'s complaint regarding officers.	

### Synopsis

On June 12, 2008, at approximately 1:30 AM, § 87(2)(b) entered the uptown side of the Astor Place 6 train subway station in Manhattan. § 87(2)(b) realizing he needed change for a \$20 bill, asked everyone he encountered for several minutes to break the large bill until he finally received change; he was allegedly speaking in a loud, boisterous and profane manner. He then entered the turnstile and went to the subway platform, where four officers from Transit Bureau District 4 were located – Sgt. Florin Duta, PO Jon Crose, PO Brian Folmer and PO Christopher Bradley. § 87(2)(b) then walked to the edge of the platform and pantomimed jumping in front of an oncoming train, at which point he was issued a summons § 87(2)(b) by PO Folmer. § 87(2)(b) disputed the summons; during the ensuing conversation, PO Crose allegedly intentionally spit on his face (**Allegation A**). § 87(2)(b) was escorted out of the station, and went to the Transit District 4 stationhouse to complain. There, he spoke to Lt. Vito Labella, who allegedly refused to take § 87(2)(b)'s complaint about the officers' conduct (**Allegation B**).

Although § 87(2)(b)'s allegations were eligible for mediation, the complaint was deemed unsuitable for mediation § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

### Summary of Complaint

#### *CCRB Testimony (encl. 6a-e)*

On June 30, 2008, § 87(2)(b) was interviewed at the CCRB. § 87(2)(b) is a § 87(2)(b)-old male, standing 5'11" and weighing 211 pounds. He provided his race as "other" § 87(2)(b)

On June 12, 2008, at about 12:30 AM (according to his testimony; police documentation establishes that the incident occurred at approximately 1:30 AM), § 87(2)(b) arrived alone at the Astor Place 6 train subway station. He was carrying a canvas bag of film equipment and was wearing a tool belt. § 87(2)(b) had not been drinking and was not under the influence of any other substance. He went to the uptown side of the station, intending to take the train to Grand Central Terminal to connect to a Metro-North train. Upon entering the station, § 87(2)(b) realized that he needed change for a \$20 bill in order to buy a Metrocard. Neither the vending machine nor the station agent had any change available. He asked several civilians as they entered the station, none of whom had change. § 87(2)(b) described his own demeanor at this time as "non-threatening" and "friendly," and said he was not speaking very loudly, but noted that he was "shocked" that he could not get change. He noticed that there were four uniformed police officers standing on the platform, identified by the investigation as PO Brian Folmer, PO Jon Crose, PO Christopher Bradley and Sgt. Florin Duta. He asked one of these officers for change; the officer had none. It appeared that three of the officers were issuing a summons to an intoxicated male on a bench.

After about ten minutes, § 87(2)(b) finally got change from another civilian, bought a Metrocard, and entered through the turnstile. He asked the officer who he had previously asked for change, "You really don't have change for a \$20?" § 87(2)(b) was not angry or upset, but genuinely confused that he had so much trouble breaking a \$20 bill. § 87(2)(b) did not say anything else and the officer walked away without giving any verbal response. § 87(2)(b) just barely missed a departing train, but stated that he did not move quickly toward the train, made no statements about missing it, and did not change his actions at all in response to the train pulling away.

The four officers then called § 87(2)(b) over to where they were standing. § 87(2)(b) set down his bag near the platform edge and approached. The officers told § 87(2)(b) that he had "lunged" toward the train; he denied doing any such thing to the CCRB. One of the officers (he did not know which one) asked him for identification and asked if he had any warrants on him. § 87(2)(b) said the officers were going to be "very disappointed" because he had no warrants, then retrieved his identification from his bag and gave it to the officers. One officer appeared to check for § 87(2)(b)'s warrants over the radio. The officers then began talking to § 87(2)(b) "like he was garbage," but he could not elaborate on what they said. § 87(2)(b) said, "Don't talk to me like that," took out his cell phone, and began to call his lawyer. An unknown officer

told him to hang up the phone and said, “Who do you think you’re calling?” An officer identified by the investigation as PO Folmer – described as a white male standing 5’10”, with a slightly heavy build and dirty blond hair, in his 40s or 50s – began writing him a summons. § 87(2)(b) asked why he was getting a ticket and PO Folmer said he was “being disorderly.” § 87(2)(b) disputed this, and told the officers that he was not being loud, blocking anyone’s way, or drunk.

Another officer, identified by the investigation as PO Crose, then spit on § 87(2)(b)’s face. He did this by puckering his lips and, it appeared to § 87(2)(b) intentionally expelling a small amount of saliva on § 87(2)(b)’s cheek. § 87(2)(b) could only describe PO Crose as a white male of similar size as PO Folmer and with a five o’clock shadow, but was certain that his shield number was “3191.” § 87(2)(b) was required to wipe the saliva off his face. He said, “You spit in my face!” several times. The officers did not respond and PO Crose did not apologize. § 87(2)(b) continued to argue with the officers about his summons for several minutes, with him asserting that they did not have legal grounds for stopping him. § 87(2)(b) believed the officers were “just pissed off” about him and stated to the CCRB that he may be “the only person in New York that doesn’t stand for” being treated so rudely by the police. He informed the officers that he had to make a train at Grand Central, and believed that the officers detained him so that he would miss the train. Their conversation lasted between 10 and 12 minutes, after which all the officers escorted him out of the station. An officer handed § 87(2)(b) his summons when he was above ground. Of the other two officers, § 87(2)(b) could describe one only in the same terms as he described PO Crose, and the other as a clean-shaven white male with brown hair and glasses, in his late-30s or early-40s.

By this point, § 87(2)(b) believed that he was going to miss his train anyway, so he called 311 to determine how to complain about the incident. He went to the 9<sup>th</sup> Precinct stationhouse, where he was told to go to Transit Bureau District 4 stationhouse in the Union Square subway station. He arrived there roughly 40 to 50 minutes after the incident began. § 87(2)(b) first spoke to an unidentified white male officer described as 6’2” and muscular, with a short haircut, in his 30s and dressed in a blue uniform. He asked to speak to this officer’s superior, stating that he was there “to file a complaint.” He then spoke to another officer who came out to speak to him, identified by the investigation as Lt. Vito Labella. He described Lt. Labella as a white male dressed in a white shirt, standing about 5’6”, with an average build, balding but with some hair remaining, in his 40s or 50s.

§ 87(2)(b) spoke to Lt. Labella about the incident, mentioning the fact that an officer spit on him. During their conversation, however, Lt. Labella did not say anything directly addressing the fact that an officer spit on him, and spoke mostly about the summons; he seemed to think § 87(2)(b) was trying to dispute his summons. § 87(2)(b) said that he understood he had to go to court to dispute the summons and said that he was complaining about the officers’ conduct. § 87(2)(b) continued to speak to Lt. Labella for roughly 15 minutes, during which time he explicitly asked to file a “complaint.” Lt. Labella never offered § 87(2)(b) any method of filing a complaint. § 87(2)(b) asked, “Who do I need to talk to?” Lt. Labella did not answer this question, and never provided a phone number to the CCRB or referenced the agency in any way. He said that he would talk to the officers but also said that they “couldn’t do anything about” the situation. Lt. Labella never appeared to write anything down, a fact that § 87(2)(b) pointed out to Lt. Labella. § 87(2)(b) did not believe he raised his voice, but stated that he was “very upset.”

After this conversation, an unidentified black or Hispanic male officer in his early 30s, standing about 6’1” and with a muscular build, escorted § 87(2)(b) out of the station. § 87(2)(b) believed this officer was ending his tour because he was wearing a half-way-unbuttoned uniform shirt. This officer told § 87(2)(b) that he should leave to avoid being arrested, and suggested that he would not accomplish anything by continuing to complain. § 87(2)(b) felt that this officer was giving him friendly advice rather than threatening or coercing him. § 87(2)(b) then left. During his time at the stationhouse, no one ever informed § 87(2)(b) that he was about to be arrested.

### **Results of Investigation**

#### **PO Jon Crose Statements**

*Memo Book (encl. 7a-c)*

PO Crose had no memo book entries regarding this incident.

*CCRB Testimony (encl. 8a-b)*

On July 29, 2008, PO Jon Crose was interviewed at the CCRB. PO Crose is a § 87(2)(b)-old white male with grey hair and blue eyes, standing 6’0” and weighing 220 pounds. He has 20 years’ tenure with

the NYPD and is assigned to Transit District 4. On the evening of June 11 and morning of June 12, 2008, PO Crose worked a tour of 11:15 PM to 7:50 AM. He was the sergeant's operator, driving Sgt. Duta in a marked vehicle numbered 5926. § 87(2)(g)

PO Crose was standing on the platform with Sgt. Duta when he heard yelling coming from near the token booth, roughly 30 feet away. He could not hear what § 87(2)(b) was saying. Because no civilians complained about § 87(2)(b)'s actions, the officers did not approach him. After about five minutes, § 87(2)(b) arrived on the platform. PO Crose described § 87(2)(b) as making a lunging motion § 87(2)(g)

PO Crose approached § 87(2)(b) with at least one other (unknown) officer and asked § 87(2)(b) for an explanation for his actions. § 87(2)(b) said something to the effect that it was a joke. PO Folmer asked § 87(2)(b) for his identification and began writing him a summons § 87(2)(b). PO Crose continued to converse with § 87(2)(b) who was acting uncooperatively and disputing the summons. During this conversation, PO Crose stood one-and-a-half or two feet from § 87(2)(b). As he was speaking, PO Crose accidentally expelled a small amount of saliva, which he described as a "bubble," on § 87(2)(b)'s face. § 87(2)(b) began to complain that PO Crose spit on him, and appeared to believe PO Crose had done so intentionally. § 87(2)(b) seemed to be overreacting to this; PO Crose stated to the CCRB, "You'd think that I 'hocked a loogie' on his face, the way he was acting." PO Crose responded that he did not spit in his face. § 87(2)(b) continued to complain.

§ 87(2)(b) was told to leave the station and complied. PO Crose walked § 87(2)(b) to the turnstile and watched to make sure he went upstairs. PO Crose believed that no officer physically escorted § 87(2)(b) upstairs or past the turnstile. PO Crose did not see § 87(2)(b) again.

### **PO Brian Folmer Statements**

#### *Memo Book (encl. 9a-c)*

PO Folmer's memo book indicates, at 1:30 AM, he issued summons § 87(2)(b) to § 87(2)(b) § 87(2)(b).

#### *Summons § 87(2)(a) 160.50 (encl. 10a)*

PO Folmer issues this summons to § 87(2)(b) at 1:30 AM on June 12, 2008 at the Astor Place #6 subway station. § 87(2)(a) 160.50

#### *CCRB Testimony (encl. 11a-b)*

On July 29, 2008, PO Brian Folmer was interviewed at the CCRB. PO Folmer is a § 87(2)(b)-old white male standing 5'10" and weighing 190 pounds. He has 16 years' tenure with the NYPD and is assigned to Transit Bureau District 4. On June 12, 2008, PO Folmer worked a tour of 11:15 PM to 7:50 AM, assigned to "patrol 1" in Transit Bureau District 4, an assignment that patrols subway trains from 14<sup>th</sup> Street to 125<sup>th</sup> Street. He was working with PO Bradley, dressed in uniform, and not assigned a vehicle.

PO Folmer was standing on the Astor Place subway platform with PO Bradley, Sgt. Duta, and PO Crose. The officers were checking northbound trains for people committing any violations as the trains pulled into the station. PO Folmer was waiting for a train to arrive when he first noticed § 87(2)(b) standing near the token booth, "yelling and screaming" for two or three minutes. PO Folmer did not recall any specific statements § 87(2)(b) made or any comments about trying to get change for a \$20 bill. While § 87(2)(b) was on the outside of the turnstile, he had no interaction with PO Folmer. § 87(2)(b) then entered through the turnstile, walked to the edge of the platform, and motioned as though he were going to jump in front of a train, outstretching both arms over the edge of the platform in the direction of the tracks. At this time, there was no train leaving the station, but one was entering the station; it had not yet arrived at the platform but was visible in the tunnel. Sgt. Duta then instructed him to issue § 87(2)(b) a summons, so PO Folmer approached § 87(2)(b). At that point, § 87(2)(b) was standing about ten feet back from the edge of the platform. PO Folmer obtained § 87(2)(b)'s identification and began writing the summons, as well as conducting a routine warrant check. While he did this, PO Crose spoke to § 87(2)(b) who was upset and angry about being issued a summons. § 87(2)(b) disputed the summons, and PO Crose informed him that he was receiving it because he made the motion toward the tracks. They were standing two feet apart. At one point during this conversation, PO Folmer saw a "piece of spittle" came out of PO Crose's mouth and hit § 87(2)(b) in the face. § 87(2)(b) began saying things to the effect that PO Crose spit on him intentionally.

After § 87(2)(b) was issued the summons, PO Folmer told him to leave the station, due to his screaming and motioning toward the tracks, and § 87(2)(b) complied.

Later the same morning, PO Folmer saw § 87(2)(b) at his command. § 87(2)(b) was standing in front of the desk, attempting to make a complaint with the desk officer, whose identity PO Folmer did not recall. He overheard part of the conversation and remembered only that § 87(2)(b) was asking to file a complaint. PO Folmer did not interact with § 87(2)(b) who still was angry and speaking “fairly loudly.” § 87(2)(b)’s demeanor was “strange,” as if he may have been intoxicated or had psychiatric problems. PO Folmer thought § 87(2)(b) did not appear satisfied by the response he received because he remained agitated.

#### **Sgt. Florin Duta Statements**

*Memo Book (encl. 12a-b)*

Sgt. Duta had no memo book entries regarding this incident

*CCRB Testimony (encl. 13a-b)*

On August 15, 2008, Sgt. Florin Duta was interviewed at the CCRB. Sgt. Duta is a § 87(2)(b)-old white male, standing 5’2” and weighing 220 pounds. He has 8 years’ tenure with the NYPD and is assigned to Transit Bureau District 4. On June 12, 2008, Sgt. Duta worked a tour of 11:15 PM to 8:02 AM as patrol sergeant. He was partnered with PO Crose, dressed in uniform and assigned to a marked van numbered 5926. § 87(2)(g)

Sgt. Duta stated that he, PO Crose, PO Bradley and PO Folmer were present at the Astor Place subway station to check the station, when, § 87(2)(g), they heard § 87(2)(b) near the turnstile making a lot of noise. Sgt. Duta additionally noted that § 87(2)(b) was yelling, singing and cursing, saying, “Fuck this, fuck that.” § 87(2)(b) may have had headphones on. The officers walked in his direction, and § 87(2)(b) looked directly at them before making a lunging motion toward the tracks. Sgt. Duta described this motion § 87(2)(g), and also confirmed that there was an oncoming train about to enter the station. He also added that the curved layout of the station made it difficult to see where the oncoming train was located, which led him to be concerned for § 87(2)(b)’s safety. He did not think § 87(2)(b) intended to actually jump in front of the train but noted that other people on the platform reacted as if they thought he was going to. At this point, Sgt. Duta directed PO Folmer to issue him a summons. Two officers, including PO Folmer, approached § 87(2)(b) to issue him the summons, while Sgt. Duta remained back near the turnstiles, standing within five or six feet, but could hear their conversation. § 87(2)(b) appeared angry, cursing and asking why he was being stopped. The officers explained that he was not allowed to act like he was going to jump in front of a train. Sgt. Duta recalled that PO Crose was talking to § 87(2)(b) during which time he saw a “drop” of spit come out of PO Crose’s mouth and land on § 87(2)(b)’s face. It was apparent to Sgt. Duta that this was unintentional. § 87(2)(b) made a comment about this and PO Crose apologized. After being issued the summons, § 87(2)(b) was told to leave the station and he did so.

Sgt. Duta did not see § 87(2)(b) again that night at the stationhouse and was never informed that he had been there.

#### **Lt. Vito Labella Statements**

*Memo Book (encl. 14a-b)*

Lt. Labella had no memo book entries specifically regarding this incident. His memo book indicated his tour started at 11:00 PM, that he was away from the desk from 5:15 AM to 6:15 AM to take meal, and that his tour ended at 7:45 AM.

*CCRB Testimony (encl. 15a-b)*

On December 10, 2008, Lt. Vito Labella was interviewed at the CCRB. Lt. Labella is a § 87(2)(b) old white male standing 5’6” and weighing 190 pounds. He has 22 years’ tenure with the NYPD and is assigned to the Transit District 4 command. On the morning of June 12, 2008, he worked a tour of 11:00 PM to 7:45 AM, working as the desk officer for the duration of the tour. He was dressed in uniform.

Lt. Labella stated that before appearing at the CCRB he discussed this incident with the other officers involved. Based on doing so, he recalled that the incident involved someone who was issued a summons at Astor Place, then came into the stationhouse and was “irate” about receiving the summons. Lt. Labella believed the individual was raising his voice and moving his hands in an agitated fashion. He

wanted Lt. Labella to “adjudicate the summons then and there.” Lt. Labella tried to calm him down and informed him that he was unable to do so and that if he wanted to contest the summons, he was entitled to go tell his side of the story in court and have a judge rule on the ticket. He believed that the individual was unreceptive to his attempts to calm him down. Lt. Labella had only a faint independent recollection of this encounter, however, and stated that it is relatively common for people to come to the stationhouse and contest summonses. He also viewed § 87(2)(b) s photocopied identification and did not recognize him. He did not believe that § 87(2)(b) made any allegations of misconduct against the officers who issued the summons. When asked, he specifically denied that § 87(2)(b) alleged that an officer spit on him, or otherwise acted discourteously. He stated that he has a “script” for when civilians do attempt to make complaints about police officers’ conduct. When asked to do so, Lt. Labella properly described the process by which he would take a civilian complaint when appropriate, and noted, “I’ve taken CCRBs before, I’m not afraid to take a CCRB.” When asked about § 87(2)(b) s demeanor upon leaving the stationhouse, he said, “If it’s the same person, I don’t think he was happy.”

### **Officers Not Interviewed**

§ 87(2)(g) His statement has not been obtained.

### **NYPD Documents**

*Lt. Labella NYPD Photograph (encl. 16a)*

Lt. Labella’s Department photograph has been enclosed, as it demonstrates that he fits § 87(2)(b) s description of the officer to whom he spoke at the stationhouse.

*Roll Call (encl. 17a-p)*

The roll call for Transit Bureau District 4 confirms all above officers’ assignments.

*Command Log (encl. 18a-c)*

The Transit Bureau District 4 command log does not contain any reference to § 87(2)(b) s appearance at the stationhouse.

### **Complainant/Victim Criminal Conviction History**

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **CCRB Histories**

§ 87(2)(b) (encl. 4a)

This is the first CCRB complaint to involve § 87(2)(b)

*PO Crose and Lt. Labella (encl. 2a, 3a)*

Neither PO Crose nor Lt. Labella has been the subject of a substantiated CCRB allegation.

### **Criminal Summons Disposition**

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## **Conclusions and Recommendations**

### **Identification of Subject Officers**

PO Crose admitted to being the officer who spit on § 87(2)(b) and his shield number, 3119, is very close to the shield number § 87(2)(b) provided, 3191. Lt. Labella was identified as the desk officer at the time and date that § 87(2)(b) went to the Transit Bureau District 4 stationhouse, and, though he did not recall his conversation with § 87(2)(b) in much detail, he did acknowledge a vague recollection of the incident. As noted above, he also fits § 87(2)(b) s description of the officer to whom he spoke.

### **Undisputed and Disputed Facts**



§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b) claimed that, at the stationhouse, he asked Lt. Labella to take a complaint and specifically mentioned the fact that an officer spit on him. However, he acknowledged that Lt. Labella never addressed this detail and instead seemed to focus on the fact that he was unable to help § 87(2)(b) with his summons. § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b). Indeed, a cursory search of the CCRB's past investigations reveals that at least two cases within the past two years were initially reported by Lt. Labella (CCRB #200700399 and #200816751; encl. 20a-b).

§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b)  
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§ 87(2)(b)

**Allegation A: At the Astor Place subway station, PO Jon Crose acted rudely toward § 87(2)(b)**  
§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

**Allegation B: At the Transit District 4 stationhouse, Lt. Vito Labella did not process § 87(2)(b)'s complaint regarding officers.**

Patrol Guide procedure 207-31 directs a member of service to "report all misconduct complaints... including unnecessary use of force, abuse of authority, discourtesy, offensive language, etc. to [the CCRB]" (encl. 1a-g). It is undisputed that Lt. Labella did not take a complaint regarding this incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: